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GOVERNOR

Testimony of Linda L. Smith
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Before the

Senate Committee on Water and Land

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State Capitol, Conference Room 229

SB 2423 Relating to Land Acquisition

Chair Hee and Members of the Committee:

Thank you for the opportunity to represent Governor Lingle on SB 2423, SD1, a measure that provides tools for the acquisition of lands at the area known as Turtle Bay on Oahu's North Shore. We appreciate this step the Senate has taken to provide a legislative vehicle, should it be needed, for this significant undertaking.

The Administration is recommending clarifying amendments to the bill.

Before discussing the specifics of SB 2423, I would like to provide some history behind the Governor's State of the State Address when she introduced the idea that the State, in collaboration with private, public, and non-profit partners, should purchase the 850-acre Turtle Bay property. For several years the Lingle-Aiona Administration has been monitoring activities on the North Shore. Governor Lingle has long been troubled by the proposed development of a major resort complex in this area and the impact this would have both on the public infrastructure and the quality of life for Oahu residents and visitors.

She was encouraged last year by two significant purchases of land supported by the North Shore community. A coalition of community, public, and non-profit organizations came together to preserve the Waimea Valley and to purchase Pupukea-Paumalu. During her State of the State Address the Governor recognized several of the community leaders who were instrumental in these efforts.

When it was announced that the Turtle Bay creditors filed a foreclosure lawsuit against the Turtle Bay owners, Governor Lingle recognized this was the opportune time for the State to publicly express its interest in preserving and protecting nearly five miles of pristine coastline and some of the last remaining open space along the North Shore.

The Legislature also has long recognized the significance of this area and in 2006 proposed House and Senate Resolutions calling for the rigorous reexamination of the expansion of the Turtle Bay resort. While neither of the 2006 resolutions passed, in 2007 the Legislature enacted HCR 194 that requested the Senate Committee on Judiciary and Labor and the House Committee on Labor to convene a joint hearing on the impacts of the Turtle Bay Resort expansion on the vibrant North Shore of Oahu. Unfortunately, this joint hearing never took place.

In 2008 we have the opportunity to join together, Legislative and Executive branches, private and non-profit, community-based and national, federal and local, to save this unique and special place.

SB 2423 SD 1 appears to be modeled along the lines of the successful Kukui Gardens legislation that allowed the preservation of affordable housing in downtown Honolulu. First, it provides unspecified sums for the Board of Land and Natural Resources or another State entity to negotiate with the current landowner, which is technically Kuilima Resort Company, rather than Oaktree Capital Management. Second, it further authorizes the issuance of an unspecified amount of general obligation bonds for the possible purchase of the property. And, it authorizes the use of eminent domain powers should an agreement not be reached.

While it may not be necessary to use all of the legislative remedies to acquire this property, this bill provides an avenue should non-legislative solutions not succeed. We believe the bill can be strengthened by amending several provisions.

First, we are concerned that the description of the properties in Section 2 of the bill limits the State's ability to acquire the resort and accompanying developed portions held by Kuilima Resorts Company. Governor Lingle has made it clear that the State does not intend to operate a hotel or manage condominiums and golf courses. However, it is necessary and prudent for the State to have the ability to acquire the entire area, including the developed sections, to use the proceeds from the sale of the developed portions and possible additional developable sections to protect an agreed upon portion of undeveloped space. We recommend Section 2 and each reference in the bill to "undeveloped property" be revised to include the entire area shown on the map accompanying this testimony, as well as certain properties mauka of Kamehameha highway not currently shown on the map.

Second, we recommend Section 1 and Section 3 be revised to allow the Board of Land and Natural Resources, or any appropriate entity of the State, to serve as the negotiating entity for the preservation of this land. Similar to the successful Kukui Gardens negotiations, we believe a working group with technical experience in these types of complex financial transactions and that is knowledgeable in preservation and protection programs can best fulfill the requirements.

Third, we recommend amending Section 6 to revise the references to Oaktree Capital Management and replace the wording with Kuilima Resort Company, and person or entity which holds an interest in the property or their successors in interest, to

properly refer to any appropriate controlling entity we will need to work with in the final disposition of this property.

We also believe that the language in Section 6 should be amended to allow the use of private investment or donations, federal funds, special funds, public lands, and other assets both to carry out the negotiations as well as to acquire Turtle Bay. Governor Lingle has been encouraged by the outpouring of support she has received from a wide variety of organizations and entities who want to help in this endeavor. Governor Lingle has spoken to Secretary Dirk Kempthorne about assistance from the Department of the Interior and will be traveling to Washington, DC later this month to meet with the Secretary of the Interior. We have also been encouraged by support from charitable organizations, including the Trust for Public Lands. We ask that the legislation, if it is enacted, allow for the maximum flexibility in how resources are brought to this project.

Fourth, we recommend deletion of Section 7. One of the keys to a successful negotiation is the ability to genuinely work out a reasonable purchase price. If this bill were enacted with a stipulation of how much in general bonds would be issued to purchase Turtle Bay, the negotiating team will lose leverage in negotiating a fair and reasonable price. Real estate markets are dynamic and, thus, it is important that maximum leeway be given to the negotiating team without signaling to the sellers what the State might be willing to pay for this property. This was recognized in the Kukui Gardens legislation, which did not include any GO bond funding at the time the negotiations legislation was enacted.

We have provided draft language to the Committee for your consideration.

Some have voiced concerns that Governor Lingle has not presented a specific plan to purchase the land or describe what will be done with the property. That is true because she recognizes it should not be her plan, but the community's plan. This proposal touches our entire State and requires discussion and input from all sectors. I also note that the Governor will not negotiate this transaction through the media. Additionally, the Governor has had a long-standing policy of preferring to negotiate land transfers rather than exercising eminent domain powers.

In summary, for too long and too often important pieces of rural Hawaii have been sold to the highest bidder and developed into something that forever changed the essence and character of the area. Governor Lingle has spoken often and eloquently about the need to transform our economy into one that no longer depends upon the sale of land, to one based on the brainpower of our residents. As we work on this transformation, it is crucial to preserve elements of Hawaii's lifestyle and identity. Preserving Turtle Bay is an important part of this effort. We look forward to working with the Legislature, members of the public, federal agencies, national organizations, and even international organizations to pursue the truly worthy goal of preserving Turtle Bay.